

K21-902

**AMENDMENT NO. 1 TO FORMER NSA EAST BANK
REAL ESTATE GROUND LEASE AND DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF NEW ORLEANS
AND
EMDRC PARTNERS, LLC**

THIS FIRST AMENDMENT (the “**Amendment**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**” or the “**LRA**”), and EMDRC PARTNERS, LLC, a Louisiana limited liability company, represented by Joseph A. Jaeger, Jr., Manager (the “**Lessee**” or “**EMDRC**”). LRA and Lessee are sometimes collectively referred to as the “**Parties**.” The Amendment is effective as of the date of execution by the City (the “**Effective Date**”).

RECITALS

WHEREAS, on August 25, 2016, the Council of the City of New Orleans adopted an ordinance (Ordinance Number 27034 M.C.S) to authorize the Mayor of the City of New Orleans to enter into a lease agreement with EMDRC Partners, LLC;

WHEREAS, Section two (2) of Ordinance Number 27,034 M.C.S provides that the rent shall be a minimum annual payment of \$150,000 per year and 5% of gross rental income;

WHEREAS, on November 2, 2016, LRA and Lessee entered into a Former NSA East Bank Real Estate Ground Lease and Development Agreement (the “**Lease**”) to stimulate employment in the City lost as a result of the Base Realignment and Closure (“**BRAC**”); and

WHEREAS, LRA and Lessee, each having the authority to do so, desire to enter this Amendment to amend the rent and to modify the terms and conditions of the Lease.

NOW THEREFORE, for good and valuable consideration, the City and the Lessee amend and/or reaffirm certain terms and provisions of the Lease as follows:

1. **Phasing Plan.** The Phasing Plan described in Subsection 2.3 of the Lease shall be deleted in its entirety and replaced as follows:

- 2.3. The Lessee shall commence and complete the redevelopment of Building 601, Building 602, and Building 603, the unimproved land, and the Public Amenity Improvements agreed to and in accordance with the schedule set forth in an updated Phasing Plan, which will be amended and submitted to the City for review and approval by no later than December 1, 2021, except as otherwise set forth in Subsection 9.11.4. The Lessee shall provide an updated Phasing Plan that at a minimum will contain targeted milestones and target dates for starting and completing construction, and redevelopment of Building 601 as primarily commercial, Building 602 as primarily parking, and Building 603 as primarily residential (unless otherwise agreed to by the Parties in writing), the unimproved land, and the Public Amenity Improvements. Any changes to the Phasing Plan shall

require the written approval of the Parties, which shall not be unreasonably withheld, conditioned, or delayed.

2. **Rent.** The Rent described in Subsection 3.4 of the Lease shall be deleted in its entirety and replaced as follows:

3.4 **Rent.** Lessee shall pay the LRA “**Rent**” which shall include the following:

3.4.1 **Rent Payments.** The “**Rental Payments**” for the Leased Premises shall be calculated in the following manner. The Rental Payments shall be Seventy-Five Thousand Dollars (\$75,000.00) per annum for Building 603 payable annually in advance, as adjusted in accordance with Subsection 3.4.1.3 and Subsection 3.4.1.4.

The Rental Payments shall be Seventy-Five Thousand Dollars (\$75,000.00) per annum for Building 601 and Building 602 payable annually in advance, as adjusted in accordance with Subsection 3.4.1.3 and Subsection 3.4.1.4.

Upon the City’s review and approval, which shall not be unreasonably withheld, conditioned, or delayed, the Parties agree and acknowledge that the Rental Payments will, be offset by the following: (a) Lessee’s direct costs incurred from providing security from November 2, 2016 through March 22, 2020; and (b) the cost previously incurred by EMDRC in connection with providing security to the Leased Premises prior to November 2, 2016, provided, however, that EMDRC produces verified proof that the City and EMDRC agreed in writing to allow EMDRC to offset specific security expenses prior to November 2, 2016 and EMDRC’s authorized representative submits an affidavit attesting that the specific security expenses were not part of the pre-development costs offered by EMDRC to the City and proof of payment, including without limitation, canceled checks, audit, bank statements, itemized billing statements and credit card statements. The Lessee may produce said records in electronic format, provided, however that the records must be easily accessible and readable. The Lessee shall be responsible for identifying, matching and reconciling any payments, dilutions, and disputes with respect thereto. For the sake of clarity, the abatement does not apply to any architectural, construction, or manufacturing services, materials, or supplies.

Furthermore, the abatement may be offset by direct costs incurred by LRA beyond normal municipal services provided by the City or as included in any CAM Fees, due to EMDRC’s failure to meet its obligations, including without limitation: removal of hazardous waste, on and to the Leased Premises where the LRA incurred costs or expenses resulting from an act, omission, or responsibility of Lessee, provided, however, that the City’s authorized representative submits an affidavit to EMDRC attesting to same and provides adequate documentation from which services rendered and payments made by the LRA can be reasonably discerned and verified with reasonable certainty, including, but not limited to, an itemized billing statement

The Parties acknowledge and agree to commence Rental Payments for Building 601 and Building 602 twelve (12) months after the financial closing of Building 603 (i.e., the financial closing of HUD 220 and/or LIHTC transaction, or similar source of affordable housing financing – consistent with the forty (40) year compliance period set forth herein - by May 31, 2022, except as otherwise set forth herein) (“**Financial Closing**”). The first rental payment will be a pro-rated amount based on the number of months remaining in the calendar year, and each subsequent annual Rental Payment shall be paid on the first day of each year thereafter (the said days being the “**Rent Payment Dates**”). If any Rent Payment Date falls on a day which is not a Business Day, the Rental Payment due and payable on such date shall be due and payable on the next succeeding Business Day without interest or penalty if paid on such succeeding Business Day. A "Business Day" is defined as any day other than a Saturday or Sunday or other day on which the banks in the City are authorized or required to be closed.

- 3.4.1.1. The first Rental Payment for Building 603 is due six (6) months after the Financial Closing of Building 603. The first rental payment will be a pro-rated amount based on the number of months remaining in the calendar year, and each subsequent annual Rental Payment shall be paid on the first day of each year thereafter. If any Rent Payment Date falls on a day which is not a Business Day, the Rental Payment due and payable on such date shall be due and payable on the next succeeding Business Day without interest or penalty if paid on such succeeding Business Day. A "Business Day" is defined as any day other than a Saturday or Sunday or other day on which the banks in the City are authorized or required to be closed.
- 3.4.1.2. The Rental Payment applicable to Building 603 or Building 601 and Building 602 shall not increase until the first (1st) day of the one hundred and ninth (109th) month following the first Rent Payment Date for such Building.
- 3.4.1.3. Beginning on the first day of the one hundred and ninth (109th) month following the first Rent Payment Date for each Building (“**Initial Adjustment Date**”), the Rental Payment shall be adjusted by an amount equal to the product of the Initial Percentage Change and the Rental Payment (exclusive of any abatement, as set forth in Subsection 3.4.1). The “**Initial Percentage Change**” shall be the difference between the Price Index for the forty-ninth (49th) month after the Term beginning date (the “**Initial Base Month**”), and the Price Index for the one hundred and eighth (108th) month after the Term beginning date, expressed as a percentage of the Price Index for the Initial Base Month. “**Price Index**” shall mean the CPIU, U.S. City Average, all items (1982-84 = 100), as prepared by the U.S. Bureau of Labor Statistics. Rental Payments shall in no event be reduced as a result of application of the rent adjustment formula. The maximum Initial Percentage Change shall be 4.2 percent.

- 3.4.1.4. Beginning on the date that is sixty (60) months after the Initial Adjustment Date and continuing every sixty (60) months thereafter (each, an “**Adjustment Date**”), the Rental Payment shall be adjusted by an amount equal to the product of the Percentage Change and the Rental Payment. The “**Percentage Change**” shall be the difference between the Price Index used for the immediately preceding Adjustment Date (the “**Base Month**”), and the Price Index for the month two months prior to the current Adjustment Date, expressed as a percentage of the Price Index for the Base Month. Rental Payments shall in no event be reduced as a result of application of the rent adjustment formula. The maximum Percentage Change on any Adjustment Date shall be 4.2 percent.
- 3.4.1.5. If any of the rent payable under the terms of this Lease shall be or become uncollectible, reduced or required to be refunded because of any legal restriction, the Lessee shall enter into such agreements and take such other steps as the LRA may reasonably request and as may be legally permissible to permit the LRA to collect the maximum sums that from time to time during the continuance of such legal restriction may be legally permissible (and not in excess of the amounts reserved therefore under this Lease). Upon the termination of such legal restriction, the rent shall become and thereafter be payable in accordance with provisions hereof for the periods following such termination.
- 3.4.2. Public Amenity Improvements. As additional consideration for this Lease, the Lessee agrees to construct, at its sole cost and expense, public amenity improvements (“**Public Amenity Improvements**”) in an amount of no more than Five Million Dollars (\$5,000,000.00) for such Public Amenity Improvements, provided, however that the Parties agree and acknowledge that this definition of Public Amenity Improvements shall not include private amenities. Examples of Public Amenity Improvements include but are not limited to: providing infrastructure services in connection with building structures including domestic water, sewer, gas, electricity and site storm water management, enhanced technological infrastructure beyond basic Wi-Fi; streets, roads & common areas; business centers; day care centers; fitness centers; recreational facilities and areas including furniture, fixtures and equipment; enhancing natural environments like green spaces, walking paths and communal areas; sitewide landscaping; rooftop lounges; provisions for outdoor entertainment venues; enhancements to reduce living expenses for residents including solar and water management technologies.
- 3.4.3. Occupancy by the LRA. The Site Plan shall designate one (1) floor’ other than the first floor, within Building 601 or Building 602 (to be jointly selected by the LRA and the Lessee, whose consent shall not be unreasonably withheld or delayed) that will be made available by the Lessee to the LRA, at no rental cost to the LRA (provided that LRA shall pay its share of CAM fees), for LRA use during the Term of this Lease (the “**LRA Premises**”). The Phasing Plan shall identify when the LRA Premises will be completed and available for occupancy by the LRA. The LRA Premises

may be used for any lawful commercial purpose that is reasonably consistent with uses of the overall development of the Leased Premises.

- 3.4.3.1. The LRA Premises shall be provided to the LRA with base building amenities only to be agreed upon by the Lessee and the LRA during the Feasibility Period, at no rental cost to the LRA; provided, that the base building amenities provided to the LRA Premises shall be at least equal to those base building amenities provided to other tenants of the Project, who have leased premises for uses substantially similar to those uses of the LRA.
- 3.4.3.2. The LRA Premises are provided at no rental cost to the LRA; provided, however, that the Lessee may charge CAM Fees at a rate equal to or lower than that charged to other tenants on the Leased Premises. The LRA shall pay such CAM Fees within sixty (60) days of receiving an invoice from the Lessee.
- 3.4.3.3. The LRA shall bear the costs of all tenant required build-out costs over and above base building amenities which amenities shall consist of a "white box" condition that is secure and dry, and in which the mechanical, electrical, and plumbing ("MEP") systems are operational and capable of accommodating future tenant-required build-outs.
- 3.4.3.4. In the event that the LRA does not require use of all or a portion of the LRA Premises, the Parties may enter into negotiations to amend the LRA Premises for a portion or all of the remainder of the Term. The terms of any such agreement shall be memorialized in an amendment to this Lease.

3. **Percentage Rent.** The Percentage Rent described in Subsection 3.5.1.1. of the Lease shall be deleted in its entirety and replaced as follows:

- 3.5.1.1. **Percentage Rent.** On January 30 of each year, the Lessee will pay the LRA five percent (5%) of the total Gross Rental Revenue collected by the Lessee from only non-residential subleases in Building 603 during the preceding calendar year plus 5% of all Gross Rental Revenue (i.e., both residential and non-residential revenue) collected on the remainder of the Leased Premises (collectively, the "Percentage Rent").

4. **Use of Leased Premises.** Section 6 entitled "USE OF LEASED PREMISES" shall be deleted in its entirety and replaced as follows:

- 6.1. **Permitted Uses.** The Leased Premises shall be redeveloped for any lawful use) in accordance with the Reuse Plan, the EDC Agreement, the Act of Sale and this Lease (in the event of any conflict among the aforementioned documents, this Lease shall control). Generally, the Leased Premises may be used as an emergency operations center for the development of temporary hurricane shelter services, emergency preparedness, pre-disaster mitigation, post-disaster mitigation, preparedness/recovery research with everyday uses for non-profit disaster related agencies and training, mixed use with commercial real estate development, retail development, residential, and sustainable growth-related business development ("Permitted Uses").

- 6.1.1. The Leased Premises shall be utilized in accordance with the use allocation described in the Site Plan (collectively the “Use Allocation”). The Lessee may amend the Use Allocation with LRA Approval, which approval shall not be unreasonably withheld, conditioned or delayed.
- 6.2. Intentionally Omitted.
- 6.2.1. Intentionally Omitted.
- 6.2.2. Intentionally Omitted.
- 6.2.3. Intentionally Omitted.
- 6.2.4. Intentionally Omitted.
- 6.3. Compliance with Plans. The Lessee shall comply with the “Management Plan”, the “Marketing Plan”, the “Phasing Plan” and the “Site Plan”, each as may be amended or modified as set forth in this Lease. The Lessee shall notify the LRA, in writing, and receive the LRA’s written consent for, any proposed material change to the Management Plan, the Marketing Plan, the Phasing Plan or the Site Plan prior to undertaking any such proposed changes, which notice shall include sufficient detail for the LRA to assess the impact of the change on the Project and value of the Project. The LRA’s consent shall not be unreasonably withheld, conditioned or delayed.
- 6.4. Lessee shall develop and maintain not less than 275 units of housing in Building 603, with a unit mix as follows: 40% of units affordable to households making less than 60% of Area Median Income (“AMI”). Any deviations in the unit mix and the number and levels of affordable housing units will require the written approval of the LRA, and such approval will not be unreasonably withheld.
- 6.4.1. All such provisions regarding the unit mix and the number and levels of affordability of the affordable housing units will run for an initial compliance period of forty (40) years. If at any time following such initial compliance period, Lessee markets or rents the unit mix at a ratio of affordable rate units (as defined by HUD) to market rate units below that required by the project’s LIHTC financing, in addition to the Rent described in Subsection 3.4 and the Percentage Rent described in Subsection 3.5.1.1, as amended, each year on January 30, the Lessee shall resume payments to the LRA in the amount of five percent (5%) of total collected Gross Rental Revenue received by the Lessee from non-residential subleases during the preceding calendar year (“**Percentage Rent**”).

Lessee will be obligated to pay to the LRA the greater of: (1) the adjusted Rent described in Subsection 3.4, the Percentage Rent described in Subsection 3.5.1.1, as amended and five (5%) percent of the total collected residential gross rental revenue during the preceding calendar year, or (2) the market rent of a ground lease as determined by an appraisal at that time.

“Market Rent” shall mean the annual fair market rent for the Leased Premises determined according to the following procedure. Lessee shall provide a list of three (3) appraisers, each of whom has at least five (5)

years' experience appraising commercial real property values in the metropolitan New Orleans area and each of whom is a Louisiana Certified General Real Estate Appraiser (pursuant to La. R.S. 37:3391 *et seq.*) and a member of a nationally recognized appraisal organization. Within twenty-one days after receipt of the list of appraisers, the City shall notify Lessee of its selection of one (1) of the appraisers from the list to perform the appraisal. However, in the event the City finds the three appraisers listed by the Lessee to all be objectionable, the City may reject all three appraisers in writing and provide alternative selection criteria for a new list of appraisers. If the Lessee does not receive a selection or the City's alternative selection criteria within the twenty-one-day period, Lessee may select an appraiser from the list it previously submitted. The appraiser so selected shall thereafter prepare a market report setting the Market Rent as of the date of the appraisal. Lessee shall be solely responsible for the cost of the appraisal.

Furthermore, the LRA expects that such affordable housing requirements, enumerated in Subsections 6.4 and 6.4.1. and associated with affordable housing financing for the project—including but not limited to Low Income Housing Tax Credits issued through the Louisiana Housing Corporation, as well as US Department of Housing and Urban Development multifamily affordable housing loans or mortgage insurance programs—will be enshrined in a Land Use Regulatory Agreement or similar covenant, as well as in a ground lease addendum associated with any permanent financing.

5. **Operation and Maintenance of Leased Premises.** Subsections 8.2. and 8.7.1. of the Section entitled "Operation and Maintenance of Leased Premises" are deleted in their entirety and replaced as follows:

8.2. The Lessee shall ensure that all subleases and contracts relating to the Development of the Leased Premises (including any construction activities thereon), shall contain clauses indemnifying and holding the LRA or any successor in interest of the LRA harmless from any and all liabilities and losses (including without limitation attorneys' fees, disbursements and other charges) incurred as a result of any claim or cause of action arising as a result of any acts or omissions of any Lessee or any sublessee, unless such claims arise as a result of the LRA's gross negligence or willful acts.

8.7.1. **Funded Accounts.** Commencing three (3) years following the Effective Date of the Lease, Lessee shall establish and maintain the Funded Accounts for maintenance, capital repair and replacement in an interest-bearing account in a state bank organized under the laws of Louisiana, or national bank domiciled in or having a branch office in Orleans Parish, and which depository shall be a member of appropriate Federal Depository Insurance Organizations. The Funded Accounts shall be funded with the greater of (i) Fifty Thousand Dollars (\$50,000.00) Adjusted, or (ii) an amount equivalent to one percent (1%) of Gross Collected Non-Residential Rental Revenue for all rentable space per year to be paid after the payment of operating expenses and debt service. Such amount should begin funding at the same

rate any time the actual amount in such Funded Accounts drops below the allotted amount. The financial institution holding such Funded Accounts shall include the LRA as a recipient of all account statements. The Funded Accounts shall be available for use by Lessee to make necessary non-routine capital repairs and replacements to Improvements throughout the term of this Lease, including repairs to, renovation or reconstruction of, the systems and structural elements of the building and related Improvements. The LRA shall have the right to request that repairs and replacements be made using the funds from the Funded Accounts, and the Lessee's consent thereto shall not be unreasonably withheld. Lessee shall provide an annual written summary of the use of the Funded Accounts, and at other times upon the LRA's request, which identifies the amount in the account, the deposits and the withdrawals in sufficient detail as to provide descriptions of the sources and uses of the account.

6. **Default and Termination.** Section 9 of the Lease is amended by deleting Subsection 9.11. entitled "Termination During Feasibility Period" and Subsection 9.11.4. entitled "Completion of Plans" and replacing Subsections 9.11 and 9.11.4. with the terms and provisions below (note: Subsections 9.11.1, 9.11.1.1., 9.11.1.2., 9.11.1.3., 9.11.1.4., 9.11.2, 9.11.3, and 9.11.5 of the Lease shall remain unchanged). In addition, Section 9 of this Lease is further amended by adding Subsection 9.13 relative to the City's termination rights in the event that the Lessee does not meet the closing deadline.

9.11. **Termination During Feasibility Period.** The period commencing on the Effective Date of the Lease and ending upon the Parties reaching agreement on the final versions of the Plans and the earlier of (i) the City's receipt of written notice regarding the Financial Closing for Building 603 or (ii) the period ending May 31, 2022, except to the extent the closing deadline is extended in accordance with Subsection 9.13 below (the "**Current Feasibility Period Expiration Date**"), is referred to herein as the "**Feasibility Period.**" "The Feasibility Period covers the entire Leased Premises and is not divisible by building, except as otherwise stated hereinunder.

Notwithstanding the foregoing, the Parties shall undertake the activities described in Subsections 9.11.1, 9.11.2, 9.11.3, 9.11.4, and 9.11.5 during the Feasibility Period.

9.11.4 **Completion of Plans.** As of the Effective Date of the Lease, the Parties attached to the Lease draft versions of certain exhibits which do not represent the Parties final agreement as to the content or scope of such exhibits. During the Feasibility Period, the Lessee, acting as commercially reasonable party shall submit the final version of Exhibit C (Phasing Plan), Exhibit E (SNDA), Exhibit G (Site Plan), Exhibit I (Management Plan) and Exhibit J (Marketing Plan) (collectively the "Plans") by **no later than December 1, 2021**. Such revised versions shall include a sufficient level of detail to evidence the requirements set forth herein.

Within sixty (60) days after receipt of the Phasing Plan, SNDA, Site Plan, Management Plan, and/or Marketing Plan, the LRA shall notify the Lessee in writing of either its approval thereof or of its disapproval (with the specific reasonable reasons of any disapproval) of each respective, aforementioned plan, failing which the same shall be deemed approved.

Thereafter, the Lessee shall resubmit any disapproved plan to the LRA within thirty (30) days. Within ten (10) days after receipt thereof, the LRA shall notify the Lessee in writing of its approval or disapproval (with specific reasonable reasons therefor), failing which the same shall be deemed approved. The foregoing process shall be repeated, if necessary, until each plan has been approved or deemed approved. In the event that the Parties are unable to come to an agreement on or the LRA is not reasonably satisfied with the final versions the Phasing Plan, SNDA, Site Plan, Management Plan, and/or Marketing Plan by May 31, 2022, the LRA reserves all rights and remedies available in law and in equity, including the terms and provisions in Subsection 9.11.5.2. of the Lease.

The LRA and the Lessee agree to work together, diligently and in good faith to resolve the LRA's objections. The Lessee agrees to promptly provide any further documentation and information as the LRA may reasonably request in connection with its review. The Plans shall conform to all applicable laws and the terms and provisions of the Lease.

The Parties agree and acknowledge that the LRA's review and approval rights set forth herein are for the sole benefit of LRA, and the Lessee shall bear sole responsibility for the suitability, adequacy, completeness and compliance of the Plans with all applicable laws and the terms and provisions of this Lease. The City's Office of Economic Development and/or the City Attorney's Office will be responsible for communicating all approvals and disapprovals relative to the Plans on the City's behalf in accordance with Subsection 14.1.

LRA's approval of the Plans and other matters with respect to such work will not be deemed or construed to cause LRA to be liable to any other person with respect to any matters so approved, and shall not excuse Lessee from obtaining all necessary permits or other Governmental Approvals therefor.

- 9.13 **LRA'S Termination Right.** In the event the Lessee's Financial Closing has not occurred on or before the date which is twenty-five (25) days from the scheduled closing date of May 6, 2022 (i.e., May 31, 2022 or the "Closing Deadline"), the City shall have the right to provide written notice to the Lessee that the closing deadline has not been met and that the City intends to terminate this Lease as a result thereof (the "Milestone Notice"). If Lessee

receives the Milestone Notice, it will have the right at its option to extend the closing deadline for 180 days by delivery to the City within thirty (30) days after receipt of a Milestone Notice (i) written notice of such election (the "**Extension Notice**") and (ii) payment of the sum of \$150,000 (the "**Payment**"). If Lessee does not deliver the Extension Notice and Payment to the City within such thirty (30) day period, or if Lessee does deliver the Extension Notice and Payment to the City - but Lessee does not close financing by the end of the extended period - then the City shall have the right to terminate this Lease. The Payment made to the City shall be non-refundable and fully earned by the City upon City's receipt thereof and shall not be refundable for any reason and shall not be applied against any other payment required under this Lease. If the City elects to exercise this termination right, the City shall send a written notice of termination to the Lessee within 30 days of the Closing Deadline as it may have been extended.

In the event this Lease is terminated pursuant to this Subsection 9.13, the City shall retain in full the amount collected or owed to the Funded Account pursuant to Subsection 8.7.1., and any other amounts which have been paid to the City, and Lessee shall pay to the City any Rent then due and payable, and shall surrender the Leased Premises to the LRA in the condition required pursuant to Section 11, shall deliver to LRA a termination of any memorandum of lease recorded in connection with the provisions of this Lease, and the Parties shall thereafter be released from all obligations set forth herein except any such obligations that expressly survive termination. Notwithstanding anything contained in this Lease to the contrary, in no event shall either Party be liable to the other for any consequential or punitive damages in connection with this Lease. Without limiting the generality of the foregoing, the Lessee shall have no claim for payment of any costs or expenses incurred by it in connection with this Lease.

7. **Taxes and Costs of Doing Business.** Section 10 of the Lease is amended by adding Subsection 10.5, as follows:

10.5 **Tax Exempt Land.** The Land and Leased Premises are owned by the City, and, as such, are currently tax exempt. If ad valorem or real estate taxes are assessed against the Land, the Leased Premises, and/or the Improvements, then subject to any right to contest described in this Lease, along with all other rights afforded in law and in equity, the Lessee shall pay all ad valorem or real estate taxes, payments in lieu of any of the foregoing (whether or not expressly so designated), fines, penalties and other similar or like governmental charges applicable to any of the foregoing, and any interest or costs with respect thereto, which are imposed, assessed, levied, or become due or payable or become a charge or lien upon, or arise in connection with the ownership, lease, use, occupancy or possession of the Land, the Leased Premises or the Improvements thereon. In the event that ad valorem taxes are found not to be applicable, the Parties acknowledge

and agree that the Lessee will be responsible for collaborating with either the City, the Industrial Development Board (“IDB”), the Finance Authority of New Orleans (“FANO”), or another agency with similar authority to structure payments in lieu of taxes (“PILOT”) during the Term when the Land, the Leased Premises and/or any Improvements are deemed exempt from ad valorem real estate taxes; in which case, Lessee will pay the City an annual PILOT in an amount as set forth in a separate agreement.

8. **Restoration and Surrender.** Section 11 is amended by adding Subsection 11.3, as follows:

11.3 **Ownership of Improvements.** All of the Leased Premises in existence as of the Effective Date are recognized and agreed to constitute property owned or leased by the City. The Lessee does not and shall not assert any ownership rights in same, its rights being limited to its leasehold interest provided herein. All Lessee Improvements and other constructions made by or on behalf of the Lessee shall constitute the property of the Lessee, owned by the Lessee, until the expiration or sooner termination of this Lease, and until said expiration or sooner termination, the City does not and shall not assert any ownership interest in same. At the expiration or sooner termination of this Lease, all such Lessee Improvements and other constructions will ipso facto become the property of the City without payment of any nature or kind. All movable property of the Lessee, including the Lessee’s Property, shall remain the property of the Lessee and may be removed at any time by the Lessee provided that an Event of Default is not then in effect, and provided the removal thereof does not cause, contribute to or result in Tenant's default hereunder, and further provided that the Lessee shall promptly repair any damage to the Leased Premises resulting from the attachment or removal of Lessee’s Property or any other movable (personal) property. Upon the termination or expiration of this Lease, and subject to the provisions of Section 11 hereof, the Leased Premises and all Improvements shall be surrendered, delivered and/or transferred to the City.

9. **Notices.** Subsection 14.1 of the Section entitled “Notices” is deleted in its entirety and replaced as follows:

14.1. All notices, approvals, consent and communications required or permitted under this Lease (including change of address set forth below) shall be in writing and shall be deemed given to, and received by, the receiving party: (i) when hand delivered to the street address of the receiving party set forth below; or (ii) one (1) day after deposit with a national overnight courier addressed to the receiving party at the street address set forth below:

Lessee: EMDRC Partners, L.L.C.
 Attn: Joseph A. Jaeger, Jr.
 Manager of EMDRC Partners, L.L.C.
 3330 N. Causeway Blvd.
 Suite 400
 Metairie, LA 70002

with a copy to: Dwyer, Cambre & Suffern
 Attn: Stephen I. Dwyer
 3000 West Esplanade Avenue, Suite 200
 Metairie, Louisiana 70002

If to the LRA: City of New Orleans
 Jeffrey Schwartz
 Director of Economic Development
 1340 Poydras Street, Suite 1800
 New Orleans, LA 70112

with a copy to: City of New Orleans
 Sunni J. LeBeouf
 City Attorney
 1300 Perdido Street, Suite 5E03
 New Orleans, LA 70112

All requests for approval or consent of the LRA must be given to all of the LRA addresses set forth above.

10. Assignments, Subleases and Licenses. Subsection 15.1. of the Section entitled “Assignments, Subleases and Licenses” is deleted in its entirety and replaced as follows:

15.1. In accordance with the Management Plan, the Lessee anticipates subleasing portions of the Leased Premises to sub-lessees, in order to achieve the economic development purposes, benefits, financial incentives, and opportunities set forth in the Management Plan. The Lessee may sublease portions of the Leased Premises to any sublessee whose use of the Leased Premises will be of a type permitted by and consistent with Applicable Laws, this Lease and the Management Plan provided that the LRA shall have the right to approve non-residential subleases which such approval shall not be unreasonably withheld, conditioned or delayed. If the LRA does not object to a proposed non-residential sublessee whose use is consistent with Applicable Laws, this Lease and the Management Plan within ten (10) business days, such sublessee shall be deemed approved.

11. Insurance. Section 20 entitled “Insurance” is deleted in their entirety and replaced as follows:

20.1 From and after the Effective Date of the Lease, unless otherwise set forth hereinunder, the Lessee, at its expense, shall, for the benefit of the LRA in

its capacity as a lessor hereunder (and all successor lessors, and the term "LRA" shall include same), and, if required by the Leasehold Mortgage, the Leasehold Mortgagee, maintain or cause to be maintained insurance with terms and coverage in the following amounts:

- 20.1.1. Upon the issuance of a Certificate of Occupancy for any buildings or structures on the Leased Premises, Business income or rent loss insurance in an amount equal to one year's Rental Payments.
- 20.1.2. Workers' Compensation - Intentionally Omitted.
- 20.1.3. Commercial general liability insurance (including coverage for bodily injury, property damage, personal injury and broad form contractual liability coverage) in a form acceptable to the LRA. The certificate must establish that Lessee has obtained general liability insurance in the amount of not less than one million dollars (\$1,000,000) per occurrence, or such other minimum amount as may be established from time to time, for accidents or occurrences which cause bodily injury, death, or property damage as a result of any condition of the Development, the Improvements, or Lessee's construction activities related to the Development.
- 20.1.4. Policy or policies insuring loss or damage to the Leased Premises (unless otherwise insured by the sublessees), as follows: The Lessee shall obtain property insurance against all risks of loss, including flood, to the Leased Premises, including, but not limited the improvements on the Land. The Lessee will insure the property at the full Replacement Cost with no coinsurance penalty provision and/or shall maintain the right to self-insure for any losses or damages above the insurance coverage maintained by the Lessee. Further, the Lessee's responsibility to obtain flood insurance is limited to the maximum available policy value under the National Flood Insurance Program ("NFIP"). City of New Orleans shall be named as the loss payee.

The acceptance of evidence of insurance requirements by the City shall in no way be constructed to relieve, waive or restrict other obligations under the Lease. It is understood that neither failure to comply nor full compliance with the foregoing insurance requirements shall limit or relieve the Lessee's sole responsibility for any damages and/or cost needed to restore the Leased Premises to their "pre-loss" condition. The Lessee's coverage shall be primary insurance for any and all claims/damages. Any insurance or self-insurance maintained by the City shall be non-contributing to the Lessee's coverage or lease obligations.

- 20.1.5. Upon commencement of construction, Builder's Risk (Course of Construction) Insurance utilizing an "All Risk" (Special Perils) coverage form, on a replacement cost basis, including coverage on the entire Work, to include but not limited to coverage for Flood and Named Storm, Perils of Fire, Theft, Mysterious Disappearance, Changes or Extremes of

Temperature and Soft Cost, with limits equal to the completed value of the project and no coinsurance penalty provisions. The Builders' Risk policy shall provide coverage for that portion of the building or site vacated by the Insured to accommodate the construction/work performed. Coverage shall not be cancelled or lapse due to such vacancy.

Policy shall include coverage during transit, installation and while materials are being stored off site. Such coverage shall name the City of New Orleans as a Loss Payee as its interest may appear.

- 20.1.6. Umbrella (excess) liability insurance in the minimum amount of \$5,000,000.00.
- 20.1.7. Upon the execution of this Amendment, Pollution liability insurance in the amount of \$5,000,000 coverage per incident and in the aggregate (minimum three (3) year policy); \$250,000 self-insured retention, 25% earned premium at inception; LRA named as additional insured; no cancellation without sixty- (60-) day notice to LRA; policy subject to LRA review prior to binding; claims made policy; insurer must be at least AM Best A-X and Standard and Poor A Positive.
- 20.2 The amount of all insurance specified in Subsection 20.1.4 and Subsection 20.1.5 above shall be equal to the full replacement cost of the improvements on the Land, as the same shall exist from time to time, subject to the provisions of Subsection 20.1.4 concerning self-insurance. Such policy or policies shall insure against all risks of direct physical loss or damage, subject to the provisions of Subsection 20.1.4 concerning self-insurance. The deductible amount shall not exceed an amount that is customary in the situation and the Lessee shall be liable for any deductible amount in the event of a loss otherwise covered by such insurance. All policies of insurance that this Lease requires the Lessee to carry and maintain or cause to be carried or maintained pursuant hereto shall be issued by an insurer authorized to do business in the State and having an A.M. Best Company rating of A-X or better. All policies shall provide by appropriate language that the LRA, and, if required by the Leasehold Mortgage, are an additional insured or joint loss payee, as applicable, that the insurance afforded by such policies is primary insurance, and that all rights of the insurer for contribution or otherwise from the LRA or other insurers of the LRA are waived. Each policy shall contain an endorsement that will prohibit its cancellation or material modification prior to the expiration of thirty (30) days after notice of such proposed cancellation or material modification to the LRA.
- 20.3 Lessee will provide, and maintain current, a Certificate of Insurance naming the LRA, the City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers are to be covered as "Additional Insureds" on the CGL policy with respect to liability arising out of the performance of this agreement. General liability coverage can be

provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used). The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificate holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06—City Hall, New Orleans, LA 70112. Certificates of insurance (in a form satisfactory to the LRA) evidencing the effectiveness of the insurance coverage that the Lessee is required hereunder to maintain or cause to be maintained shall be delivered to the LRA prior to the Effective Date and not less than thirty (30) days prior to the expiration or termination thereof. Duplicate or certified copies of such policies shall be delivered to the LRA within fifteen (15) Business Days of demand. In the event copies of any policy or a certificate reasonably satisfactory to the LRA is not delivered when first required, or any insurance is not in effect or does not comply with the requirements hereof, without affecting the obligations of the Lessee or the rights of the LRA, and, only if the insurance required hereby is not in effect, the LRA may cause to be purchased insurance complying with the provisions hereof, and the Lessee agrees to pay all expenses of the LRA in connection therewith, from time to time on demand.

- 20.4 The Lessee shall pay or cause to be paid all premiums and other charges with respect to all insurance required hereby when first due or payable and, at the request of the LRA, shall provide proof of such insurance.
- 20.5 The Lessee's maintenance of the insurance required in accordance with this Article shall affect no limitation on the Lessee's liability with respect to any loss or damage resulting from the willful misconduct, lack of good faith, or negligence of the Lessee or any of its officers, agents, servants, employees, sublessees, licensees, or invitees or by any failure on the part of the Lessee to fully perform its obligations under this Lease. The Lessee shall, without prejudice to any other rights of the LRA, bear all risk of loss or damage or destruction to the Leased Premises arising from any causes whatsoever, except those caused by LRA, its personnel, respective servants, employees, agents, invitees, visitors or licensees.
- 20.6 In the event that any item or part of the Leased Premises shall be damaged (except *de minimis* damage of \$25,000 or less) or destroyed (the "**Casualty Property**"), the Lessee shall promptly give notice or cause notice to be given thereof to the LRA.
- 20.7 Unless otherwise provided herein, to the extent of insurance proceeds received, the Lessee shall as soon as practicable after the casualty, restore or cause to be restored the Casualty Property as nearly as possible to the condition that existed immediately prior to such loss or damage.
- 20.8 In the event that the LRA and the Lessee agree that the magnitude of the damage and destruction to the Leased Premises renders the Leased Premises incapable of use by the Lessee for its purposes under the Management Plan

and the repairs, rebuilding, or replacement of the Casualty Property cannot reasonably be expected to be substantially completed within one (1) year of the occurrence of the casualty, the Lessee or the LRA may terminate this Lease upon written notice to the other party of the termination (the “**Termination Notice**”) (provided, however, the LRA shall not accept termination of the Lease from the Lessee unless agreed to in writing by each previously identified Leasehold Mortgagee). Unless the LRA and the Lessee agree otherwise, the Termination Notice shall be effective thirty (30) days after receipt (or refusal) of the Termination Notice by the other party. In the event that the Lease is terminated pursuant to this Section, the Lessee shall be required to remove or cause to be removed debris from and restore the damaged area of the Leased Premises to a reasonably clean and safe condition subject to Lessee’s receipt of sufficient insurance proceeds for such purpose. Subject to the other provisions of this Lease and the terms of the Leasehold Mortgage, the Lessee may retain any remaining balance of the insurance proceeds.

20.9 Subject to the rights of the Leasehold Mortgagee, absent an agreement in writing by the LRA and the Lessee, if the Lessee refuses, or fails promptly to repair, restore, or rebuild or cause the repair, restoration, or rebuilding of the Leased Premises or any part thereof so damaged or destroyed, to the reasonable satisfaction of the LRA, the LRA may, by one hundred and eighty (180) days’ written notice to the Lessee, terminate this Lease. In such event, title to the Leased Premises shall vest in the LRA without notice or further action being required on the LRA’s part, and the LRA may undertake the rebuilding or restoration of the Project and any other improvements placed on the Land or the damaged or destroyed portion thereof, and may complete it, by contract or otherwise, and may take possession of and use any materials on the Land necessary for completing the work. In the event the LRA elects to rebuild or restore the Project, all applicable insurance proceeds relative to the Casualty Property shall be applied first to complete such rebuilding or reconstruction. Subject to the other provisions of this Lease, the LRA may retain any remaining balance of the insurance proceeds.

20.10 Subject to the rights of the Leasehold Mortgagee in Article/Section 22, if all or any portion of the Leased Premises or Improvements shall be acquired for any public or quasi-public use through taking by condemnation, eminent domain or any like proceeding, or purchase in lieu thereof (“**Taking**”), such that Lessee reasonably determines that the Leased Premises cannot, at reasonable cost, continue to be operated for its then current use, with sufficient parking for such use, then the Term shall cease and terminate as of the date the condemning authority takes title or possession, whichever first occurs, and all rentals shall be paid up to that date. In addition, Lessee shall have the right to pursue whatever damages to which it may be entitled due to such taking.

20.11 LRA and Lessee agree that in the event of any loss or damage to the Leased Premises, or of the contents, improvements, fixtures and/or equipment of LRA or Lessee, as applicable, located therein, by fire or any other perils which each said party insures against, regardless of the cause thereof, and whether or not the same be caused by the carelessness or negligence of LRA or Lessee, their respective servants, employees, agents, invitees, visitors or licensees, neither LRA nor Lessee, nor their respective insurance carriers shall have any right of subrogation over or against the other, their servants, employees, agents, invitees, visitors, or licensees for any such damage or loss so sustained.

25. **Miscellaneous.** Section 25 of the Lease is amended by adding the following terms and provisions:

25.24 **Living Wages**

- A. **Definitions.** Unless otherwise expressly provided in this Agreement, Capitalized terms used but not defined herein, shall have the definition attributed to them in Article VIII, Section 70-802 of the City Code.
- B. **Compliance.** To the fullest extent permitted by law, the Contractor agrees to abide by City Code Sections 70-801, *et seq.*, which requires, in pertinent part, the following:
1. Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code (“**Living Wage**”);
 2. Receipt of at least seven (7) days per year of compensated leave for Covered Employees, as required by Section 70-807 of the City Code; and
 3. Post notice in a prominent place regarding the applicability of the Living Wage Ordinance in every workplace in which Covered Employees are working that is within the Covered Employer's custody and control, as required by Section 70-810 of the City Code.
- C. **Current Living Wage.** In accordance with the Living Wage Ordinance, the current Living Wage per the Consumer Price Index data is equal to \$11.19. The Contractor shall be responsible for confirming the Current Living Wage by visiting <https://www.nola.gov/economic-development/workforce-development/>.
- D. **Adjusted Living Wage.** In accordance with Section 70-806(2) of the City Code, the Contractor acknowledges and agrees that the Living Wage may be increased during the term of the Agreement. Any City contract or City financial assistance agreement (a) extending from one calendar year into the next or (b) with a term of longer than one year, inclusive of any renewal terms or extensions, shall require the Covered Employer to pay

the Covered Employee an Adjusted Living Wage, accounting for the annual Consumer Price Index adjustment. The indexing adjustment shall occur each year on July 1st using the Consumer Price Index figures provided for the calendar year ended December 31st of the preceding year, and thereafter on an annual basis.

- E. **Subcontract Requirements.** As required by Section 70-804 of the City Code, the Contractor, beneficiary, or other Covered Employer, prior to entering into a subcontract, shall notify subcontractors in writing of the requirements and applicability of Article VIII – The Living Wage Ordinance (“**Article**”). City contractors and beneficiaries shall be deemed responsible for violations of this Article by their subcontractors.
- F. **Reporting.** On or before January 31st and upon request by the City, the Contractor shall identify (a) the hourly wage earned by the lowest paid Covered Employee and (b) the number of days of compensated leave received by Covered Employees earning less than 130% of the then-prevailing wage during the current term of the Agreement, and provide the identified information to the following:

Office of Workforce Development
Living Wage - Compliance
1340 Poydras Street – Suite 1800
New Orleans, Louisiana 70112

- G. **Compliance Monitoring.** Covered Employers under this Agreement are subject to compliance monitoring and enforcement of the Living Wage requirements by the Office of Workforce Development (the “**OWD**”) and/or the Chief Administrative Office (“**CAO**”). Covered Employers will cooperate fully with the OWD and/or the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements. Steps and actions include, but are not limited to, requirements that: (i) the Contractor will cooperate fully with the OWD and the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements; (ii) the Contractor agrees that the OWD and the CAO and their designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, payroll records and employee paychecks; and (ii) that the City may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

H. **Remedies.** If the Contractor fails to comply with the Living Wage requirements during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City, including, but not limited to, the penalties and enforcement mechanisms set forth in Section 70-811 of the City Code.

25.25 **HireNOLA Program.** To the extent applicable, the Lessee agrees to abide by City Code sections 70-496, *et seq.*, to demonstrate good faith efforts to fully carry out the applicable requirements of the HireNOLA Program as defined in the City Code. If the Lessee fails to comply with the requirements of the HireNOLA Program during the term of the Lease said failure may result in termination of the Lease or pursuit of other remedies.

25.26 **Compliance with the City's Hiring Requirements – Ban the Box.** (i) The Lessee agrees to adhere to the City's hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, Lessee must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirements is necessary. (ii) Failure to maintain compliance with the City's hiring requirements throughout the term of the Agreement, or to provide sufficient written reasons for deviation, is a material breach of this Agreement. Upon learning of any such breach, the City will provide the Lessee notice of noncompliance and allow Lessee thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Lessee remains noncompliant, the City may move to suspend payments to Lessee, void the Agreement, or take any such legal action permitted by law or this Agreement. (iii) This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable, and the remaining provisions of the Agreement will remain in full force and effect. (iv) The Lessee will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all sublessees to comply with those provisions.

25.27 **Convicted Felon Statement.** The Lessee swears that it complies with City Code § 2-8(c). No Lessee principal, member, or officer has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

- 25.28 **Non-Solicitation Statement.** The Lessee swears that it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Amendment. The Lessee has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Amendment.
- 25.29 **Prior Terms Binding.** Except as otherwise provided by this Amendment, the terms and conditions of the Agreement remain in full force and effect.
- 25.30 **Electronic Signature and Delivery.** The Parties agree that a manually signed copy of this Amendment and any other document(s) attached to this Amendment delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Amendment. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Amendment.

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[SIGNATURES CONTAINED ON NEXT PAGE]

THUS DONE AND PASSED in multiple originals on the 16th day of August 2021, in the presence of the undersigned competent witnesses, who hereunto sign their names with said Appearers, and me Notary, after due reading of the whole.

CITY OF NEW ORLEANS

BY: [Signature]
LATOYA CANTRELL, MAYOR

WITNESS:

By: [Signature]

Printed Name: STORIA SMITH

WITNESS:

By: [Signature]

Printed Name: Kristen Rayne

[Signature]
NOTARY PUBLIC #24069
Clifton M. Davis III
My commission is for life

FORM AND LEGALITY APPROVED

[Signature]
Law Department, City of New Orleans

THUS DONE AND PASSED in multiple originals on the 16TH day of JULY 2021, in the presence of the undersigned competent witnesses, who hereunto sign their names with said Appearers, and me Notary, after due reading of the whole.

EMDRC, LLC

BY: [Signature]
JOSEPH A. JAEGER, MEMBER

[Redacted]
FEDERAL TAX I.D.

WITNESS:

By: [Signature]

Printed Name: JEFF FEILDEN

WITNESS:

By: [Signature]

Printed Name: C. B. MCCOY

[Signature]
NOTARY PUBLIC
ANDRÉ E. MAILLHO, ESQ.
Notary Public #82757
Louisiana Bar #28955
State of Louisiana
My Commission Is Issued for Life

[END OF AMENDMENT]